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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 SPEARMAN CORPORATION  
11 MARYSVILLE DIVISION and  
12 SPEARMAN CORPORATION KENT  
13 DIVISION,

14 Plaintiffs,

15 v.

16 THE BOEING COMPANY,

17 Defendant.

No. 2:20-cv-00013 RSM

STIPULATED PROTOCOL REGARDING  
THE DISCOVERY OF  
ELECTRONICALLY STORED  
INFORMATION

18 1. Plaintiffs Spearman Corporation and Spearman Corporation Kent Division  
19 (“Spearman”) and The Boeing Company (“Boeing”) (together, the “parties”) hereby stipulate to  
20 the following provisions regarding the discovery of electronically stored information (“ESI”) in  
21 this matter:

22 **A. General Principles**

23 1. An attorney’s zealous representation of a client is not compromised by conducting  
24 discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate  
25 in facilitating and reasonably limiting discovery requests and responses raises litigation costs and  
26 contributes to the risk of sanctions.

1           2.       As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P.  
2 26(b)(1) must be applied in each case when formulating a discovery plan. To further the  
3 application of the proportionality standard in discovery, requests for production of ESI and related  
4 responses should be reasonably targeted, clear, and as specific as possible.  
5

6           **B.       ESI Disclosures**

7           Within 30 days of entry of this Order, or at a later time if agreed to by the parties, each  
8 party shall disclose:

9           1.       Custodians. The five custodians most likely to have discoverable ESI in their  
10 possession, custody, or control. The custodians shall be identified by name, title, connection to  
11 the instant litigation, and the type of the information under the custodian's control.  
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13           2.       Non-custodial Data Sources. A list of non-custodial data sources (*e.g.*, shared  
14 drives, servers), if any, likely to contain discoverable ESI.

15           3.       Third-Party Data Sources. A list of third-party data sources, if any, likely to  
16 contain discoverable ESI (*e.g.*, third-party email providers, mobile device providers, cloud  
17 storage) and, for each such source, the extent to which a party is (or is not) able to preserve  
18 information stored in the third-party data source.  
19

20           4.       Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI  
21 (by type, date, custodian, electronic system or other criteria sufficient to specifically identify the  
22 data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B).

23           5.       Foreign data privacy laws. Nothing in this Order is intended to prevent either party  
24 from complying with the requirements of a foreign country's data privacy laws, *e.g.*, the European  
25 Union's General Data Protection Regulation (GDPR) (EU) 2016/679. The parties agree to meet  
26

1 and confer before including custodians or data sources subject to such laws in any ESI or other  
2 discovery request.

3 **C. ESI Discovery Procedures**

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5 1. On-site inspection of electronic media. Such an inspection shall not be required  
6 absent a demonstration by the requesting party of specific need and good cause or by agreement  
7 of the parties.

8 2. Search methodology. The parties shall timely confer to attempt to reach agreement  
9 on appropriate search terms and queries, file type and date restrictions, data sources (including  
10 custodians), and other appropriate computer- or technology-aided methodologies, before any such  
11 effort is undertaken. Upon request, a party shall agree to up to five more custodians (*i.e.* custodians  
12 in addition to those identified in any forthcoming or previously filed B.1 disclosure). The parties  
13 shall continue to cooperate in revising the appropriateness of the search methodology. Moreover,  
14 the parties agree to confer should any party wish to use other technology based processes, for  
15 example, predictive coding and other technology assisted review (TAR), to further identify  
16 relevant and irrelevant documents. While no party will unreasonably withhold agreement to such  
17 other technology based processes, the parties will cooperate to ensure full disclosure as to what  
18 process is proposed and will work cooperatively to resolve objections or concerns.

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20  
21 a. Prior to running searches:

22 i. The producing party shall disclose the data sources (including  
23 custodians), search terms and queries, any file type and date restrictions, and any other  
24 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable  
25 information. The producing party shall provide unique hit counts for each search query.  
26

1                   ii.       The requesting party is entitled to, within 14 days of the producing  
2 party's disclosure, add no more than 10 search terms or queries to those disclosed by the  
3 producing party absent a showing of good cause or agreement of the parties.  
4

5                   iii.       The following provisions apply to search terms / queries of the  
6 requesting party. Focused terms and queries should be employed; broad terms or queries, such  
7 as product and company names, generally should be avoided. A conjunctive combination of  
8 multiple words or phrases (*e.g.*, "computer" and "system") narrows the search and shall count as  
9 a single search term. A disjunctive combination of multiple words or phrases (*e.g.*, "computer"  
10 or "system") broadens the search, and thus each word or phrase shall count as a separate search  
11 term unless they are variants of the same word. The producing party may identify each search  
12 term or query returning overbroad results demonstrating the overbroad results and a counter  
13 proposal correcting the overbroad search or query.  
14

15                   b.       After production: Within 21 days of the producing party notifying the  
16 receiving party that it has substantially completed the production of documents responsive to a  
17 request, the responding party may request no more than 10 additional search terms or queries.  
18 The immediately preceding section (Section C(2)(a)(iii)) applies.  
19

20                   c.       Upon reasonable request, a party shall disclose information relating to  
21 network design, the types of databases, database dictionaries, the access control list and security  
22 access logs and rights of individuals to access the system and specific files and applications, the  
23 ESI document retention policy, organizational chart for information systems personnel, or the  
24 backup and systems recovery routines, including, but not limited to, tape rotation and  
25 destruction/overwrite policy.  
26

1           3.     Format.

2           a.     ESI will be produced to the requesting party with searchable text, in a  
3 format to be decided between the parties. Acceptable formats include, but are not limited to, native  
4 files, multi-page TIFFs (with a companion OCR or extracted text file), single-page TIFFs (only  
5 with load files for e-discovery software that includes metadata fields identifying natural document  
6 breaks and also includes companion OCR and/or extracted text files), and searchable PDF.

7           b.     Unless otherwise agreed to by the parties, files that are not easily converted  
8 to image format, such as spreadsheet, database, and drawing files, will be produced in native  
9 format.  
10

11           c.     Each document image file shall be named with a unique number (Bates  
12 Number). File names should not be more than twenty characters long or contain spaces. When a  
13 text-searchable image file is produced, the producing party must preserve the integrity of the  
14 underlying ESI, *i.e.*, the original formatting, the metadata (as noted below) and, where applicable,  
15 the revision history.  
16

17           d.     If a document is more than one page, the unitization of the document and  
18 any attachments and/or affixed notes shall be maintained as they existed in the original document.  
19

20           e.     The parties shall produce their information in the following format: single-  
21 page images and associated multi-page text files containing extracted text or with appropriate  
22 software load files containing all information required by the litigation support system used by  
23 the receiving party.

24           f.     The full text of each electronic document shall be extracted ("Extracted  
25 Text") and produced in a text file. The Extracted Text shall be provided in searchable ASCII text  
26 format (or Unicode text format if the text is in a foreign language) and shall be named with a

1 unique Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding  
2 production version of the document followed by its file extension).

3 4. De-duplication. The parties may de-duplicate their ESI production across custodial  
4 and non-custodial data sources after disclosure to the requesting party, and the duplicate custodian  
5 information removed during the de-duplication process tracked in a duplicate/other custodian  
6 field in the database load file.

7 5. Email Threading. The parties may use analytics technology to identify email  
8 threads and need only produce the unique most inclusive copy and related family members and  
9 may exclude lesser inclusive copies. Upon reasonable request, the producing party will produce  
10 a less inclusive copy.

11 6. Parent-Child Relationships. Parent-Child relationships (the association between  
12 an attachment and its parent document) must be preserved so a document and any attachments to  
13 that document are produced in the same production set and such relationships are identifiable.  
14 The parties agree to provide beginning attachment and ending attachment fields in the database  
15 load file to capture the entire production number range for the parent/child(ren) documents. A  
16 party may withhold wholly privileged members of a family group so long as the party inserts a  
17 slip sheet in place of the withheld document indicating that it has been “Withheld for Privilege”  
18 and logs such attachments in a privilege log in accordance with the requirements of this protocol.

19 7. Time Zone. All ESI shall be processed with a single time zone [Pacific] and a date  
20 and time setting consistent across all parties’ productions.

21 8. Metadata fields. The parties agree to include in load files the Standard Metadata  
22 fields listed at attached Exhibit A, to the extent they are reasonably accessible and non-privileged.  
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1 This list of metadata types is intended to be flexible and may be changed by agreement of the  
2 parties, particularly in light of advances and changes in technology, vendor, and business  
3 practices. The parties also agree to provide a field indicating whether the subject document has  
4 been redacted.

5 9. Hard-Copy Documents. If the parties elect to produce hard-copy documents in an  
6 electronic format, the production of hard-copy documents will include a cross-reference file that  
7 indicates document breaks and sets forth the custodian or custodian/location associated with each  
8 produced document. Hard-copy documents will be scanned using Optical Character Recognition  
9 technology and searchable ASCII text files will be produced (or Unicode text format if the text is  
10 in a foreign language), unless the producing party can show that the cost would outweigh the  
11 usefulness of scanning (for example, when the condition of the paper is not conducive to scanning  
12 and will not result in accurate or reasonably useable/searchable ESI). Each file will be named  
13 with a unique Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding  
14 production version of the document followed by its file extension).

16 **D. Preservation of ESI**

17 The parties acknowledge that they have a common law obligation, as expressed in Fed. R.  
18 Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information in  
19 the party's possession, custody, or control. With respect to preservation of ESI, the parties agree  
20 as follows:

22 1. Absent a showing of good cause by the requesting party, the parties shall not be  
23 required to modify the procedures used by them in the ordinary course of business to back-up and  
24 archive data; provided, however, that the parties shall preserve all discoverable ESI in their  
25 possession, custody, or control.  
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1           2.       The parties will supplement their disclosures in accordance with Fed. R. Civ. P.  
2 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure  
3 where that data is created after a disclosure or response is made (unless excluded under Sections  
4 (D)(3) or (E)(1)-(2)).  
5

6           3.       Absent a showing of good cause by the requesting party, the following categories  
7 of ESI need not be preserved:

- 8           a.       Deleted, slack, fragmented, or other data only accessible by forensics.
- 9           b.       Random access memory (RAM), temporary files, or other ephemeral data that  
10 are difficult to preserve without disabling the operating system.
- 11           c.       On-line access data such as temporary internet files, history, cache, cookies, and  
12 the like.
- 13           d.       Data in metadata fields that are frequently updated automatically, such as last-  
14 opened dates (see also Section (E)(5)).
- 15           e.       Back-up data that are duplicative of data that are more accessible elsewhere.
- 16           f.       Server, system or network logs.
- 17           g.       Data remaining from systems no longer in use that is unintelligible on the systems  
18 in use.
- 19           h.       Electronic data (*e.g.*, email, calendars, contact data, and notes) sent to or from  
20 mobile devices (*e.g.*, iPhone, iPad, Android devices), provided that a copy of all  
21 such electronic data is automatically saved in real time elsewhere (such as on a  
22 server, laptop, desktop computer, or “cloud” storage).
- 23           i.       Data duplicated in any electronic backup system for the purpose of system  
24 recovery or information restoration, including but not limited to, system recovery  
25 backup tapes, continuity of operations systems, and data or system mirrors or  
26 shadows, if such data are routinely purged, overwritten or otherwise made not  
reasonably accessible in accordance with an established routine system  
maintenance policy.
- j.       Data stored on photocopiers, printers, scanners, and fax machines.



1 **E. Privilege**

2 1. A producing party shall create a privilege log of all documents fully withheld  
3 from production on the basis of a privilege or protection, unless otherwise agreed or excepted  
4 by this Agreement and Order. Privilege logs shall include a unique identification number for  
5 each document and the basis for the claim (attorney-client privileged or work-product  
6 protection). For ESI, the privilege log may be generated using available metadata, including  
7 author/recipient or to/from/cc/bcc names; the subject matter or title; and date created. Should  
8 the available metadata provide insufficient information for the purpose of evaluating the  
9 privilege claim asserted, the producing party shall include such additional information as  
10 required by the Federal Rules of Civil Procedure. Privilege logs will be produced to all other  
11 parties no later than 30 days after delivering a production unless a different deadline is agreed to  
12 by the parties. The parties will discuss and consider all reasonable extension requests in good  
13 faith.

14 2. Redactions need not be logged so long as the basis for the redaction is clear on the  
15 redacted document.

16 3. With respect to privileged or work-product information generated after the filing  
17 of the complaint, parties are not required to include any such information in privilege logs.

18 4. Activities undertaken in compliance with the duty to preserve information are  
19 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

20 5. Pursuant to Fed. R. Evid. 502(d), the production of any documents in this  
21 proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding,  
22 constitute a waiver by the producing party of any privilege applicable to those documents,  
23 including the attorney-client privilege, attorney work-product protection, or any other privilege  
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1 or protection recognized by law. Information produced in discovery that is protected as privileged  
2 or work product shall be immediately returned to the producing party, and its production shall not  
3 constitute a waiver of such protection.  
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5  
6 DATED: 3/17/2020

/s/ Laura Marquez-Garrett

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13  
14 DATED: 3/19/2020

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1 **ORDER**

2 Based on the foregoing, IT IS SO ORDERED.

3  
4 DATED this 26<sup>th</sup> day of March 2020.

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6 RICARDO S. MARTINEZ  
7 CHIEF UNITED STATES DISTRICT JUDGE  
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# **EXHIBIT A**

## **Appendix 1: Metadata and Coding Fields**

The Parties agree to produce a metadata database load file with following fields in the order displayed below. The Parties agree that all fields with an asterisk\* will not be required to be produced if the files require redaction.

<b>Field Name</b>	<b>Field Description</b>
BEGBATES	Beginning Bates number as stamped on the production image
ENDBATES	Ending Bates number as stamped on the production image
BEGATTACH	First production Bates number of the first document in a family
ENDATTACH	Last production Bates number of the last document in a family
CUSTODIAN	Individual from whom the documents originated
OTHER_CUSTODIAN	Individual(s) that had electronic files that were removed due to de-duplication
DOCTYPE	Description of document (Email, Attachment, Edoc, Hard Copy)
EXTENSION	Characters of the filename indicating the relevant program used to open the file (file extension)
FULLPATH*	The directory structure of the original file(s). Any container name is included in the path.
HASHVALUE	The MD5 or SHA-1 hash value.
NATIVELINK	Native File Link for agreed upon native files, if applicable (for example Excel files)
SUBJECT*	Subject line of email
DATESENT	Date email was sent (format: MM/DD/YYYY)
TIMESENT	Time email was sent
PARENT_DATE	The date of the parent email should be applied to the parent email and all of the email attachments.
TO	All recipients that were included on the "To" line of the email
FROM	The name and email address of the sender of the email
CC	All recipients that were included on the "CC" line of the email
BCC	All recipients that were included on the "BCC" line of the email
AUTHOR	Any value populated in the Author field of the document properties
FILENAME*	Filename of an electronic document, loose files and attachments to email.
DATEMOD	Date an electronic document was last modified (format: MM/DD/YYYY)
DATECREATED	Date the document was created (format: MM/DD/YYYY)
REDACTED	Yes should be populated if a document contains a redaction.
CONFIDENTIALITY	The confidential designation should be populated.
CDVOL	The Production CD volume name.
TIMEZONE	Three letter reference to reflect time zone that data was processed in, as agreed between parties